



# Surviving Serious Criminal Charges In North Carolina

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So, you are facing an investigation or prosecution for a serious criminal offense in North Carolina? You are uninformed about the process, concerned about your reputation, and terrified of going to jail. You're not alone. Everyday, I help people in the same situation.

This report is an overview of what to expect. I can't predict every variable, but can help you better understand your situation, how the process works, and the role of good defense counsel.

In every criminal case, the ultimate goal is the same: Survival. Of course, that means different things to different people in different situations. I have defended capital murder cases where survival meant avoiding the death penalty. In other cases, even a conviction to a minor offense is unacceptable.

Your case will have its own set of considerations, obstacles, and objectives. I can help you establish and manage expectations based on those circumstances.

When we refer to serious criminal charges, we usually mean offenses for which you are facing an active sentence, supervised probation, or substantial financial penalties. The mere charge can ruin your reputation, cost you a job, or derail your plans for the future. Few experiences are more unsettling. Don't panic! Your situation is manageable, and all cases are defendable.

## *An investigator left me a message. What should I do?*

Many cases begin this way. Investigators show up to talk or leave a message for you, soliciting information. While you generally feel comfortable ignoring unwanted solicitations, that's unnatural when it comes to law enforcement. We were taught to trust and cooperate with authority figures.

Plus, ignoring the investigator may lead him to conclude that you must be guilty. Right? Well, possibly and probably, but that's not be the most important issue.

Remember, police investigators are just like everyone else. They gather information, reach conclusions, and go about the process of rationalizing those conclusions. If that information gives them cause to arrest you, submitting to an interview is unlikely to help and may just hurt you.

That is not to say that our clients never speak to investigators. Sometimes, that is the right decision or, in some instances, the least bad option. Most of the time, however, we are wise to remember that we can speak later, but can't take back what we say today.

Whatever your immediate inclination, you are unlikely to harm your situation, and ultimate defense, by seeking legal advice before speaking to a law enforcement officer. It never hurts to hear a point of view formed by years of experience, knowledge of the law, and, frankly, good and bad outcomes in similar situations.

Seeking an experienced criminal lawyer's advice helps insulate you from pressure, fear, and potential misunderstandings that result from police interviews. Never take an investigator's solicitation lightly or make assumptions about his intentions. The success or failure of your defense may hinge on your response.

## *How do I choose a lawyer?*

Choosing a lawyer is difficult because you are unlikely to have a relationship with a criminal lawyer. I get almost all my cases by referrals from other lawyers, former clients, or people familiar with my work. Some lawyers rely exclusively on advertising. Others use a combination of direct mail, Internet marketing, and advertisements in publications. While each method has benefits and shortcomings, your decision should be based on a number of considerations.

1. I would want to know as much as possible about the lawyer's experience with serious criminal cases. I would be less concerned about particular types (property crimes versus assaults). Most good criminal lawyers effectively handle all sorts of cases.
2. Another important consideration will be the level of attention and resources the lawyer can devote to your case. Does she handle a high volume of cases or focus on a few cases at a time? Is the lawyer starting a major project that will distract from your defense?
3. Of course, the major consideration is your comfort with the lawyer. Is he accessible? Is he someone who will take time to answer your questions?
4. Make sure the lawyer is willing to put your fee agreement in writing, including any contingencies, like whether the fee is for all or a portion of the case.

Consider the lawyer's experience, reputation, and availability before making such an important decision. You usually have a short window of time to choose, but weigh your options carefully.

Most lawyers earn their reputations. Without doubt, there are great lawyers who are relatively unknown and lawyers with oversized reputations. At the same time, earning a good reputation and achieving favorable results over years of experience speak volumes.

## *What should I expect my lawyer to do for me?*

Facing a serious criminal charge is life changing, win or lose. I went to law school imagining myself perpetually in the midst of high stakes trials. In reality, we spend most of our time, energy and effort outside the courtroom reviewing the prosecutor's reports, conducting investigations, and determining legal strategy. My goal is to help you survive the prosecution, whatever that means in your particular case. That does not mean I don't want to win; I would love nothing better. But, good lawyers don't risk your personal and economic liberties just for the hope of notching another victory.

We want to know all we can about you. The better we understand you as a person, the better our chances of developing a compelling defense. We keep you informed of our progress and any developments because you will have to make informed decisions about your case. Our job is to prepare you and assist you to make the right decisions.

If you contact me before charges are filed, I will begin our investigation. I may contact the investigator, the prosecutor, or both to negotiate a voluntary surrender for service of any warrants. That way, we avoid the police arresting you at home, in your office, or in a public place, reinforce that you are not a risk of flight, and show that you intend to confront the charges.

## *Will I get out of jail until my trial?*

In state court, many people get out of jail on written promises to appear, unsecured or secured bonds, or a combination of a bond and pretrial release conditions. The federal courts tend to release you or detain you based on the type of offense, the government's position on release, and an assessment of the likelihood that you will appear for trial.

Release pending trial can be really important. Notwithstanding the discomfort and monotony of sitting in the county jail, a trial will be scheduled months, or even years, after the arrest. Release pending trial allows you to work, seek or continue important medical or psychological treatment, and maintain supportive relationships.

Most important, prosecutors sometimes use pretrial incarceration to coerce guilty pleas out of people who dislike the prospect of sitting in the county jail any longer. Believe it or not, many people plead guilty to get out of jail. Seems it ought to work the other way around, but that is not always the case.

## *What happens on the first court date?*

Your first court date is a first appearance to determine whether you are requesting court appointed counsel or intend to hire counsel.

To pursue your case as a felony, the prosecutor must seek an indictment from a grand jury. In state court, only the investigator appears before the grand jury. The grand jury determines whether the investigator presented evidence, that, if true, you probably committed the alleged crime. It is a low standard and easy to meet in the absence of a defense. In federal court, witnesses appear before an investigative grand jury, which decides whether to issue an indictment applying the same standard.

Assuming the grand jury issues a true bill of indictment, you will have a number of preliminary, or administrative, court dates before trial. Those dates are for the court to monitor the progress of the prosecution (and defense). The state must produce all documents, scientific test results, and audio and video recordings in its file. Most jurisdictions require the state to provide these materials, commonly known as discovery, early in the process. Federal prosecutors have fewer obligations to provide discovery, but I often negotiate to review the government's complete file.

Before, during, and after obtaining and reviewing the prosecutor's discovery, we conduct our investigation with the help of investigators and staff. That may include interviewing witnesses, reviewing records and documents we obtain from witnesses or public agencies, and issuing subpoenas for records.

We may file motions in response to discovery produced by the prosecutor or information we obtain during our investigation. Often, courts will consider these motions in advance. Win or lose, motions are filed with an objective in mind, which can include excluding evidence, creating an opportunity to question witnesses, or narrowing the charges.

## *Will I have a trial?*

The next stage is to decide whether to plead guilty or not guilty. Most guilty pleas are part of an agreement, or plea bargain, but not always. To assist you in making these decisions, we review the investigation, discuss your options, and advise you based on the evidence.

Ultimately, you decide how to plead and always have a right to a trial before a jury. Although jury trials are less common than in the past, I have tried many cases before juries.

Before a jury can convict you of a crime, the state must present evidence of each element of the crime beyond a reasonable doubt. A verdict must be unanimous.

## *What happens if I am convicted of a crime?*

Needless to say, criminal convictions carry enormous consequences. That's why we work so hard to avoid them. At the same time, many people are convicted of crimes, even serious offenses, and survive to lead productive lives.

Some criminal convictions result in prison sentences. All require some form of supervision either at the end of the case or after incarceration. We prepare you for all the possibilities, taking into account the circumstances of your case. These are difficult discussions, but you need someone who will prepare you for the potential outcomes, including the worst and best scenarios. You cannot afford to overlook any possibility and must understand your options to make informed decisions.

Arriving at an appropriate sentence is much more complicated and involved than you might imagine. An important aspect of our job is to prepare for this possibility. We would love it if none of our clients ever faced a sentencing hearing, but the reality is that some clients are convicted. When that happens, we focus all our energy on persuading the judge to enter a favorable sentence.

## *How will I recover from this experience?*

Dispositions in felony cases run the gamut from dismissals, deferred prosecutions, not guilty, probation, and active sentences. We prepare for all possibilities and help support and guide you to make the right decisions about your case. Even people who win are changed forever. At the same time, many who lose or plead guilty to a serious offense survive to lead productive lives. Our goal is to prepare you for the eventual outcome and your transition after the case is resolved.

Please contact me with any question or concerns about your situation.

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